

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

VAQUERIA TRES MONJITAS, INC.,
and SUIZA DAIRY, INC.

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Civil Case No. 04-1840 (DRD)

Plaintiffs

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NEFTALI SOTO-SANTIAGO, in his
official capacity as Secretary of the
Department of Agriculture for the
Commonwealth of Puerto Rico, *et al*

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Consolidated with 08-2191 (DRD)

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Consolidated with 08-2380 (DRD)

Defendants

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**INDULAC’S URGENT OPPOSITION TO
THE ADOPTION OF FINAL SETTLEMENT AGREEMENT
AND MEMORANDUM OF UNDERSTANDING BETWEEN THE PARTIES**

TO THE HONORABLE COURT

Hon. Daniel R. Domínguez

COMES NOW, Intervening Defendant, Industria Lechera de Puerto Rico, Inc. (“INDULAC”), through its undersigned attorneys, and whom most respectfully states and prays as follows:

INTRODUCTION

1. Pending consideration before this Honorable Court is that certain stipulation titled *Final Settlement Agreement and Memorandum of Understanding between the Parties*, Docket No. 2322, made and entered by and amongst Suiza Dairy Corp. (“Suiza”), Vaquería Tres Monjitas, Inc. (“VTM”), the Secretary of Agriculture (the “Secretary”), and the Acting Administrator of the Milk Industry Regulatory Office (the “Administrator”) and which was filed in open court last night at 6:00 PM (the “Settlement Agreement”).

2. Said Settlement Agreement seeks to move this Court to enter into a “final, absolute, binding and unappealable judgment” [sic] pursuant to which signing parties incorrectly represent that all matters pending in the above-captioned case are settled.

3. Without any fear of being labeled as paranoid, we can state without hesitation that the Settlement Agreement constitutes an unprecedented trampling of both INDULAC and the Puerto Rico dairy farmer’s rights which should be vehemently repudiated by this Honorable Court.

4. Having said the above, for the reasons stated below, we hereby most respectfully request this Honorable Court to afford INDULAC the full fifteen (15) working days granted last night (that is without granting the petitioned judgment by stipulation) in order to afford the undersigned an opportunity to more adequately brief this Honorable Court as to the reasons why the adoption via judgment of the Settlement Agreement should be rejected.

DISCUSSION

(I) THE SETTLEMENT AGREEMENT

5. It should be apparent to this Honorable Court that the negotiations leading to the execution of the Settlement Agreement were not only ultra-expedited but also very exclusive.

6. Suffices to say to that respect that VTM purportedly was only made privy to a draft of the Settlement Agreement until Monday night and presumably did not impart approval to the same until last night.

7. With respect to INDULAC and the Puerto Rico dairy farmers, notwithstanding their condition as intervening defendants in this case, as this Court is fully aware, they were only notified electronically last night with a copy of the Settlement Agreement and its Exhibits. See *Order* dated March 23rd, 2005, Docket No. 95.

(II) The Administrative Order

8. As an integral part of the Settlement Agreement, the parties thereof incorporated several exhibits, including an administrative order which is identified as Exhibit 2 and which shall become effective as of November 7th, 2013 (the “Effective Date”).

9. A quick perusal of the same reveals several salient facts which will prove to be catastrophic for the milk industry as of the Effective Date; including, but not limited to, the following:

(a) an actual reduction of the net price to be received by the dairy farmers of \$0.081 per quart of raw milk;

(b) the *de facto* elimination of the School Luncheon, Head Start, Elders, School Refrigerator, Grade A and Quality Control Programs;

(c) the *de facto* termination of the more than 50 employees laboring for the Milk Industry Development Fund (“FFIL”, for its Spanish acronym);

(d) a scandalous and unfounded aggregate transactional cost for the dairy farmers, the government of Puerto Rico, and INDULAC, with the corresponding monetary windfall for the benefit of Suiza and VTM, which preliminarily has been estimated in an amount to exceed US\$250,000,000.00.

10. Moreover, in the specific case of INDULAC, the aforesaid order *de facto* repeals the service charge or credit order adopted by ORIL on November 9th, 2012, which provided for a credit for the purchase of raw milk in an amount sufficient for INDULAC to exist as a balancing plant (the “Service Charge Order”).

11. Said Service Charge Order and its continued effectiveness were essential conditions to the execution of and the closing of the transactions object of that certain Credit

Agreement pursuant to which the Puerto Rico Government Development Bank granted to INDULAC and FFIL senior credit facilities which in the aggregate amounted to US\$34,000,000.00, all of which are cross guaranteed.

12. Simply put, the repeal of the Service Charge Order constitutes an Event of Default under the provisions of the aforesaid Credit Agreement.

13. Finally, adding insult to injury, all of the above was approved by ORIL in blatant and direct violation of the procedural provisions and safeguards afforded to milk industry market participants such as the dairy farmers and INDULAC under Act 34 and Regulations promulgated thereunder, but more importantly, under the United States Constitution.

(III) INDULAC as an Intervening Defendant

14. As mentioned earlier, INDULAC's petition to appear in this case as an intervening defendant was granted by this Honorable Court.

15. Even though the Court forewarned both INDULAC, and the dairy farmers that if *"during the process evidence is brought forth showing that their rights are adequately represented by any other party to the instant case, their participation from the process shall be ordered withdrawn"*, any remaining notion to that effect is simply dispelled by the Settlement Agreement.

16. It has become evident that the Settlement Agreement has and will indeed bring about negative and/or adverse consequences against INDULAC and the dairy farmers, and such, the Court we respectfully submit has to address such negative and/or adverse consequences; particularly those related to due process violations.

Conclusion

17. In light of all of the above, INDULAC hereby requests from this Honorable Court to afford INDULAC the full fifteen (15) working days granted last night (that is without granting the petitioned judgment by stipulation) in order to afford the undersigned an opportunity to more adequately brief this Honorable Court as to the reasons why the adoption via judgment of the Settlement Agreement should be rejected and/or modified.

RESPECTFULLY SUBMITTED

I hereby certify that on this same date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all the attorneys of record.

In San Juan, Puerto Rico, on this 30th day of October, 2013.

COUNSEL FOR INDULAC

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